

FEDERAL PROVISIONS FOR PURCHASED AND PERSONAL SERVICE CONTRACTS

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ARTICLE I. FEDERAL CONTRACT PROVISIONS FOR PURCHASED AND PERSONAL SERVICE CONTRACTS

1.1 STANDARD TERMS AND CONDITIONS

The following Federal Laws and Regulations apply to the Contract and any subcontracts and are by this reference incorporated into the Contract.

1.2 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (49 C.F.R. § 29; Executive Order 12549)

1.2.1 Certifications

1.2.1.1 Executive Order 12549, as implemented by 49 C.F.R. § 29, prohibits the State from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted Contracts. As part of their applications each year, the State is required to submit a certification to the effect that they will not enter into Contracts over \$100,000 with suspended or debarred Vendors and that they will require their Vendors (and their Subcontractors) to make the same certification to them.

1.2.1.2 Vendors are required to pass this requirement on to Subcontractors seeking subcontracts over \$100,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both Vendors and Subcontractors and Contracts and subcontracts over \$100,000.

1.2.2 Debarment and Suspension

The Contract is subject to the debarment and suspension requirements in 49 C.F.R. § 29 and Executive Order 12549. The Vendor agrees to abide by the following certifications submitted with its Proposal: “Certification of Vendor Regarding Debarment, Suspension, and Other Responsibility Matters”; “Certification of Vendor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”; and corresponding certifications for Subcontractors.

1.3 LOBBYING REQUIREMENTS (31 U.S.C. § 1352; 49 C.F.R. § 19; 49 C.F.R. § 20)

1.3.1 The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey Contracts.

1.3.2 The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. § 19, Appendix A, § 7.

The Clause and specific language therein are mandated by 49 C.F.R. § 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Lobbying Certification and Disclosure of Lobbying Activities for third party Vendors are mandated by 31 U.S.C. § 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, “New Restrictions on Lobbying,” at 49 C.F.R. § 20.110(d) - Language in Lobbying Certification is mandated by 49 C.F.R. § 19, Appendix A, Section 7, which provides that Vendors file the certification required by 49 C.F.R. § 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. - Use of “Disclosure of Lobbying Activities,” Standard Form-LLL set forth in Appendix B of 49 C.F.R. § 20, as amended by “Government wide Guidance For New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 C.F.R. § 20, Appendix A. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]** - Vendors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. § 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the recipient.

1.3.3 The Contract is subject to the Lobbying requirements in 31 U.S.C. § 1352, 49 C.F.R. § 19 and 49 C.F.R. § 20. The Vendor agrees to abide by its “Certification Regarding Lobbying” submitted with its Proposal.

1.4 ACCESS TO RECORDS AND REPORTS REQUIREMENTS (49 U.S.C. § 5325; 18 C.F.R. § 18.36 (i); 49 C.F.R. § 633.17)

1.4.1 Reference Chart “Requirements for Access to Records and Reports by Type of Contracts.” Not requirement for the inclusion in subcontracts.

1.4.2 The following access to records requirements apply to the Contract:

1.4.2.1 Where the Purchaser is not a State but a local government and is the FHWA Recipient or a subgrantee of the FHWA Recipient in accordance with 49 C.F.R. § 18.36(i), the Vendor agrees to provide the Purchaser, the FHWA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Vendor also agrees, pursuant to 49 C.F.R. § 633.17 to provide the FHWA Administrator or his authorized representatives including any PMO Contractor access to Vendor’s records and construction sites

pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

1.4.2.2 Where the Purchaser is a State and is the FHWA Recipient or a subgrantee of the FHWA Recipient in accordance with 49 C.F.R. § 633.17, Vendor agrees to provide the Purchaser, the FHWA Administrator or his authorized representatives, including any PMO Vendor, access to the Vendor's records and construction sites pertaining to a major capital Project, defined at 49 U.S.C. § 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311. By definition, a major capital Project excludes Contracts of less than the simplified acquisition threshold currently set at \$100,000.

1.4.2.3 Where the Purchaser enters into a negotiated Contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FHWA Recipient or a subgrantee of the FHWA Recipient in accordance with 49 C.F.R. § 19.48, Vendor agrees to provide the Purchaser, FHWA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Vendor which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions.

1.4.2.4 Where any Purchaser which is the FHWA Recipient or a subgrantee of the FHWA Recipient in accordance with 49 U.S.C. § 5325(a) enters into a Contract for a capital Project or improvement (defined at 49 U.S.C. § 5302(a)1) through other than competitive bidding, the Vendor shall make available records related to the Contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

1.4.2.5 The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

1.4.2.6 The Vendor agrees to maintain all books, records, accounts and reports required under the Contract for a period of not less than three years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Vendor agrees to maintain same until the Purchaser, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).

1.4.2.7 FHWA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics		Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I <u>State Grantees</u>							
a. Contracts below SAT (\$100,000)		None	Those imposed on state pass thru to Vendor	None unless non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects		None unless ¹ non-competitive award					

Sources of Authority: ¹ 49 U.S.C. § 5325 (a), ² 49 C.F.R. § 633.17, ³ 18 C.F.R. § 18.36 (i).

1.5 ENERGY CONSERVATION REQUIREMENTS (42 U.S.C. § 6321, *ET SEQ.*; 49 C.F.R. § 18)

1.5.1 The Energy Conservation requirements are applicable to all Contracts.

1.5.2 The Energy Conservation requirements extend to all third party vendors and their Contracts at every tier and subrecipients and their subagreements at every tier.

1.5.3 The Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

1.6 CLEAN WATER REQUIREMENTS (33 U.S.C. § 1251)

1.6.1 The Clean Water requirements apply to each Contract and subcontract which exceeds \$100,000.

1.6.2 The Clean Water requirements flow down to Federal recipients and subrecipients at every tier.

1.6.2.1 The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.* The Vendor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.

1.6.2.2 The Vendor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FHWA.

1.7 CLEAN AIR REQUIREMENTS (42 U.S.C. § 7401, *et seq.*; 40 C.F.R. § 15.61; 49 C.F.R. § 18)

1.7.1 The Clean Air requirements apply to all Contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

1.7.2 The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

1.7.2.1 The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* The Vendor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.

1.7.2.2 The Vendor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FHWA.

1.8 FEDERAL CHANGES (49 C.F.R. § 18)

1.8.1 The Federal Changes requirement applies to all Contracts.

1.8.2 The Federal Changes requirement flows down appropriately to each applicable changed requirement.

1.8.3 The Vendor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FHWA MA (6), dated October 1999) between the State and FHWA, as they may be amended or promulgated from time to time during the term of the Contract. Vendor's failure to so comply shall constitute a material breach of the Contract.

1.9 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

1.9.1 Applicable to all Contracts.

1.9.2 Not required by statute or regulation for either primary Vendors or Subcontractors, this concept should flow down to all levels to clarify, to all parties to the Contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

1.9.3 No Obligation by the Federal Government

1.9.3.1 The State and the Vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the State, Vendor, or any other party

(whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

1.9.3.2 The Vendor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

1.10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (31 U.S.C. § 3801, *et seq.*; 49 C.F.R. § 31; 18 U.S.C. § 1001; 49 U.S.C. § 5307)

1.10.1 These requirements are applicable to all Contracts.

1.10.2 These requirements flow down to Vendors and Subcontractors who make, present, or submit covered claims and statements.

1.10.2.1 The Vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. § 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FHWA assisted Project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate.

1.10.2.2 The Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a Project that is financed in whole or in part with Federal assistance originally awarded by FHWA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Vendor, to the extent the Federal Government deems appropriate.

1.10.2.3 The Vendor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

1.11 CIVIL RIGHTS REQUIREMENTS (29 U.S.C. § 623; 42 U.S.C. § 2000; 42 U.S.C. § 6102; 42 U.S.C. § 12112; 42 U.S.C. § 12132; 49 U.S.C. § 5332; 29 C.F.R. § 1630; 41 C.F.R. § 60, *et seq.*)

1.11.1 The Civil Rights Requirements apply to all Contracts.

1.11.2 The Civil Rights requirements flow down to all third party Vendors and Subcontractors at every tier.

1.11.3 The following requirements apply to the underlying Contract:

1.11.3.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal highway Laws and Regulations at 49 U.S.C. § 5332, the Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Vendor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.

1.11.3.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

A. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal highway Laws and Regulations at 49 U.S.C. § 5332, the Vendor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. § 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Vendor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Vendor agrees to comply with any implementing requirements FHWA may issue.

B. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal highway Laws and Regulations at 49 U.S.C. § 5332, the Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Vendor agrees to comply with any implementing requirements FHWA may issue.

C. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Vendor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of

the Americans with Disabilities Act,” 29 C.F.R. § 1630, pertaining to employment of persons with disabilities. In addition, the Vendor agrees to comply with any implementing requirements FHWA may issue.

1.11.3.3 The Vendor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FHWA, modified only if necessary to identify the affected parties.

1.12 DISADVANTAGED BUSINESS ENTERPRISES (C.F.R. § 26)

The Vendor shall comply with the Disadvantaged Business Enterprise (DBE) provisions, if any, in the State’s underlying Master Contract and/or Task Order governing the specific purchased services funded, in part, by the FHWA.

1.13 BREACHES AND DISPUTE RESOLUTION

The Vendor shall comply with the “Disputes,” “Termination” and other applicable Sections in the State’s underlying Master Contract and/or Task Order governing the specific purchased services funded, in part, by the FHWA.

1.14 TERMINATION

The Vendor shall comply with the “Termination” Section in the State’s underlying Master Contract and/or Task Order governing the specific purchased services funded, in part, by the FHWA.

ARTICLE II. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The State encourages Disadvantaged Business Enterprise (DBE) participation on the Contract. However, there is no DBE goal established for the Contract.

ARTICLE III. CERTIFICATION REGARDING LOBBYING

3.1. The Lobbying Disclosure Act, 2 U.S.C. § 1601, *et seq.* prohibits the use of Federal funds to influence Federal employees, Members of congress, and congressional staff regarding specific Projects. Further, any person or entity who uses non-federal funds for lobbying on behalf of specific Projects or proposals must submit disclosure documentation when these efforts are intended to influence the decisions of Federal officials. The provisions apply to grants, contracts, and cooperative agreements involving \$100,000.00 or more. See Article I herein for additional information.

3.2. Accordingly, a form titled “Certification Regarding Lobbying” is provided in Exhibit 1, attached to this Appendix 18 of the RFP. The certification form must be completed if the amount of the primary Contract or any subcontract equals or exceeds \$100,000.00. The Vendor shall ensure that the certification form is included in every such subcontract.

3.3. A Vendor's completed certification form must be submitted to the State no later than the closing time for receipt Proposals. A Subcontractor's completed certification form must be submitted by the Vendor to the State upon execution of each and every subcontract, and before any such Subcontractor commences Work on the Project.

3.4. Please note that a Vendor's or a Subcontractor's failure to furnish a completed certification form may disqualify that person or Vendor from participating in the Project.

3.5. The certification form included in this RFP may be reproduced for compliance with the Subcontractor provisions herein.

ARTICLE IV. CERTIFICATION REGARDING GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

4.1. Unless otherwise permitted by Laws and Regulations, any person or entity that is debarred, suspended or voluntarily excluded may not participate in this federally assisted Project, either as a participant or as a principal, during the period of debarment, suspension, or voluntary exclusion. To meet this requirement, a certification process has been established by 49 C.F.R. § 29.

4.2. Accordingly, a Vendor certification "Government-Wide Debarment and Suspension" is provided in Appendix 7 of the RFP. The certification must be completed if the total aggregate value of the Vendor's Contract's exceeds \$100,000.00. For all other Contracts, and for all Subcontractors regardless of Contract value, a Subcontractor certification form also titled "Government-Wide Debarment and Suspension," is provided in Appendix 7 of this RFP. The Vendor shall ensure that the latter certification form is included in every Project subcontract.

4.3. The inability of a person to provide the required certification will not necessarily result in denial of participation in this Project. However, a person that is unable to provide a positive certification must attach a complete explanation, as so noted on the certification forms.

4.4. The appropriate, completed certification form for each Vendor must be submitted to the State no later than the closing time for receipt of Proposals. The completed certification forms for Subcontractors must be submitted by the Vendor to the State upon execution of each and every subcontract, and before any such Subcontractor commences Work on the Project.

4.5. Please note that a Vendor's or a Subcontractor's failure to furnish a completed certification form (or an explanation attached thereto) may disqualify that person or Vendor from participating in the Project.

V. NON-COLLUSION DECLARATION

I, by signing Proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), Vendor, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Project for which this Proposal is submitted.
2. That by signing the signature page of this Proposal, I am deemed to have signed and have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report Proposal rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time. Anyone with knowledge of possible Proposal rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

This “hotline” is part of USDOT’s continuing effort to identify and investigate highway construction Contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.